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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,524	10/23/2006	Derek I. Darley	COCH-0125-US1	4660
30678 7590 06/28/2007 CONNOLLY BOVE LODGE & HUTZ LLP 1875 EYE STREET, N.W. SUITE 1100 WASHINGTON, DC 20036			EXAMINER BOCKELMAN, MARK	
			ART UNIT	PAPER NUMBER
			3766	
			MAIL DATE	DELIVERY MODE
			06/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/586,524

Applicant(s)

DARLEY ET AL.

Examiner

Mark W. Bockelman

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 7-19-2006.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date, ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Each of the independent claims is devoid of any structure that would render the claimed device capable of functioning as claimed. See rejections on art below to statements of intended use/or of operation that is unsupported by structure.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 10-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Popish USPN 6,761,266. Applicant claims a box and a lid for holding a speech processor. Popish teaches a box for holding hearing aids. Speech processors would fit in the box as well. Applicant makes some intended use statements about the processor being mounted in the base member. The claim of course does not say what it is mounted on.

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The examiner gives no patentable weight to the statement. A speech processor mounted to its BTE housing and positioned in the base member is capable of acting as a body worn device. Applicant has no claimed structure to support the function he is claiming.

Claims 14-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Zilberman et al USPN 5,824,022. Applicant's claims 14-15 and 18 are merely directed to a speech processor module with additional intended use statements. Zilberman et al's speech processor could in theory be connected telemetrically to an outside telemetry unit repeater which in turn could be telemetrically connected to the internal portion of the implant. Thus it is conceivable to draft an embodiment that would meet applicant's intended use. With respect to claims 16 and 18, the volume and sensitivity controllers 40, 42 control the speech processor and one could adjust them if used as a BTE device or in the hypothetical system explain above using different volume and sensitivity settings. The speech processor has a power supply that has a feature (voltage) that can determine the distance the transmission coil may be placed from the receiver depending on which mode is choosen.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zilberman et al USPN 5,824,022 alone or in view of Popish USPN 6,761,266. Claim 1 recites a speech processor that is capable of being mounted in a protective case. While Zilberman shows only the speech processor, it is well known to include a protective case for carrying hearing aids and speech processors. It is obvious to place preformed foam therein to mount the device so it does not get jostled around during transport. Popish shows another protective case. The Zilberman speech processor is capable of being mounted therein with the case. The case of Zilberman has a base and a protective cover and has a compartment for storing hear devices. To have included a protective case for carrying the Zilberman speech processor would have been well known. The Zilberman device has a microphone mounted on the speech processor. The device necessarily has a first and second connection on the power supply (positive and negative) to provide power transmission to the speech processor. It would have been obvious to provide further sealing and coverings within the case to further protect the case including using a gasket and sheath.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark W. Bockelman whose telephone number is (571) 272-4941. The examiner can normally be reached on Monday - Friday 10:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272 -4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MWB

June 23, 2007


MARK SOCKELMAN
PATENT EXAMINER